

## **REMARKS**

This amendment is in response to the Final Office Action mailed February 9, 2011 (the "Office Action"). Claims 1-24 and 26-33 are pending in the application. Claim 25 was previously canceled without prejudice or disclaimer. Claims 5-9 have been amended. No new matter has been added. Applicant respectfully requests entry of the claim amendments and consideration of the present response in view of the Examiner's agreement to withdraw the finality of the Office Action. Applicant further submits that consideration of the present response is appropriate under 37 C.F.R. § 1.116, as the present response adopts suggestions made by the Office and presents claims in better form for consideration on appeal.

### **Allowable Subject Matter**

Applicant thanks the Examiner for indicating that claims 1-24 are allowed.

### **Interview Summary**

Applicant thanks Examiner Doan for the telephonic interview of April 22, 2011 with Applicant's Representative ("the interview"). Agreement was reached during the interview that the finality of the Office Action should be withdrawn and that either a new Office Action should be issued or all pending claims should be allowed.

### **Claim Objections**

The Office has objected to claims 5-9, under 37 C.F.R. 1.75(c), as being in improper form. Applicant thanks Examiner Doan for agreeing during the interview that claims 5-9 as amended comply with 37 C.F.R. 1.75(c). Hence, Applicant respectfully requests withdrawal of the objections to claims 5-9.

### **Election/Restriction**

The Office has restricted claims 1-24 and 26-33 of this application into Species I and Species II, respectively. Applicant elects the claims of Species I (claims 1-24) and provisionally withdraws the non-elected claims of Species II (claims 26-33). In addition, Applicant

respectfully traverses the restriction requirement to preserve the issue for appeal. Applicant respectfully submits that the restriction requirement is improper based on at least the following.

At pages 2-3 of the Office Action, the Office states that:

- I. **Claims 1-24**, drawn to method, system that effecting a smooth transition between adjacent digital information burst where in different modulation formats based on first and second digital symbol burst, classified in **class 370, subclass 342**.
- II. **Claims 26-33**, drawn to devices that of digital information to transmit with a phase and amplitude of a signal where they based on phase and amplitude, classified in **class 370, subclass 345**.

Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group II has separate utility such as that further distinct in specific of function such as involved a phase and amplitude of a signal where they based on phase and amplitude in the radio signal. Therefore, it was clearly distinct from group I with furthermore the claimed inventive that involved of transition between adjacent digital information burst where in different modulation formats based on first and second digital symbol burst. See MPEP § 806.05(d).

The Office identifies claim 16 as belonging to Group I. Claim 16 as pending states:

16. (Previously Presented) A method of effecting a smooth transition between consecutive sequences of digital information transmitted in different modulation formats, the method comprising:

- selecting a first sequence of digital information to be transmitted with a first phase and a first amplitude in a radio signal;
- selecting a second sequence of digital information to be transmitted with a second phase and a second amplitude in the radio signal;
- transmitting, by a transmitter, the first sequence of digital information in a first modulation format; and
- transmitting the second sequence of digital information in a second modulation format different than the first modulation format, the transmission of the second sequence starting before completion of the first sequence at an instant so selected to minimize the respective differences between the first and second phases and the first and second amplitudes.

The Office identifies claim 26 as belonging to Group II. Claim 26 as pending states:

26. (Previously Presented) A non-transitory computer readable medium storing instructions operable, when executed by a processor, to cause the processor to:

- select a first sequence of digital information to be transmitted with a first phase and a first amplitude in a radio signal;
  - select a second sequence of digital information to be transmitted with a second phase and a second amplitude in the radio signal;
  - transmit the first sequence of digital information in a first modulation format; and
  - transmit the second sequence of digital information in a second modulation format different than the first modulation format,
- wherein transmitting the second sequence begins before completing transmission of the first sequence and at a time selected to reduce a difference between the first phase and the second phase and to reduce a difference between the first amplitude and the second amplitude.

In order for a restriction requirement to be proper, the Office must show both that the asserted groups are distinct and independent and that a serious burden would be imposed on the Examiner if restriction were not required. *See* MPEP § 803.

Applicant respectfully asserts that the Office has not shown claim 16 to be patentably distinct from claim 26, since the language asserted by the Office to render these claims patentably distinct (phase and amplitude of a radio signal) appears in both claim 16 and in claim 26. Hence, the Office has not shown the claims of Group I and Group II to be patentably distinct or independent. It is respectfully submitted that inspection of the other pending independent claims reveals similar congruencies between the claims of Group I and Group II. The restriction requirement is therefore improper, since the Office has not shown the claims of Group I and Group II to be patentably distinct. The restriction requirement should therefore be reconsidered and withdrawn.

Further, Applicant respectfully submits that the Office has not shown a serious burden on the Examiner if restriction were not required. Applicant respectfully asserts that the Office has failed to show such a serious burden, since the Office has not shown that the subject matter Group II is distinct or independent from the subject matter of Group I, which has already been indicated by the Office to be allowable. Hence, the restriction requirement is improper for at least this additional reason.

Therefore, Applicant respectfully submits that the Office has neither shown the claims of Group I and Group II to be patentably distinct nor that a serious burden would be imposed on the Examiner if restriction were not required. Therefore, the Office is required to examine all pending claims on the merits. *See* MPEP 803. Reconsideration and withdrawal of the restriction requirement are respectfully requested.

## CONCLUSION

Accordingly, Applicant respectfully requests reconsideration and withdrawal of each of the objections and rejections, as well as an indication of the allowability of each of the pending claims.

Any changes to the claims in this response, which have not been specifically noted to overcome a rejection based upon the cited references, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 17-0026.

Respectfully submitted,

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Date

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